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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 378

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

CHICAGO PORTRAIT COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 11, 1931

CERTIORARI GRANTED OCTOBER 26, 1931

(36192)

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1 Before United States Board of Tax Appeals

Docket No. 21396

CHICAGO PORTRAIT COMPANY, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances: For petitioner, Arnold R. Baar, Esq.; Herman T. Reiling, Esq.; Ernest H. Emery, Esq.; Edgar H. Walker, Esq.; withdrawn, Frederick C. Laird, Esq. For respondent, A. H. Murray, Esq.

Docket entries

1926:

Nov. 20—Petition received and filed. Taxpayer notified.

Nov. 21—Copy of petition served on general counsel.

1927:

Jan. 19—Answer filed by general counsel.

Feb. 12—Copy of answer served on taxpayer. Assigned to general calendar.

Mar. 17—Notice of appearance of Frederick C. Laird as counsel for taxpayer, and request that case be placed on Chicago circuit calendar, filed.

Mar. 23—Order to place proceeding on circuit calendar for hearing signed and filed. Both sides notified.

1929:

Jan. 31—Hearing set. Calendar called March 18, 1929, Chicago, Illinois.

Feb. 6.—Notice of withdrawal of Frederick C. Laird as counsel for taxpayer filed.

Feb. 6.—Notice of appearance of Ernest H. Emery as counsel for taxpayer filed.

Mar. 20—Stipulation of facts filed in field.

Mar. 20—Motion to file amended petition filed by taxpayer. Granted 10 days to file.

Mar. 25—Amended petition filed.

Mar. 20—Hearing had before Mr. Siefkin. Submitted; petitioner to amend petition. Granted briefs due June 1, 1929.

Mar. 27—Copy of amended petition served on general counsel.

2 Apr. 10—Answer to amended petition filed by general counsel.

Apr. 25—Brief filed by general counsel.

May 23—Brief filed by taxpayer.

June 24—Findings of fact and opinion rendered; Forest D. Siefkin, Division 16. Judgment will be entered under rule 50.

Aug. 17—Notice of settlement filed by general counsel.

Aug. 20—Hearing set Sept. 11, 1929, on settlement.

1929:

Aug. 24—Consent to settlement filed by taxpayer.

Sept. 5—Decision entered; Benj. H. Littleton, division 4.

1930:

Feb. 4—Petition for review to U. S. Circuit Court of Appeals, 7th Circuit, with assignments of error filed by general counsel.

Feb. 25—Proof of service filed (taxpayer).

Feb. 25—Proof of service filed (attorney).

Mar. 24—Notice of appearance of Arnold R. Baar and Herman T. Reiling as counsel for taxpayer filed.

Apr. 10—Motion for extension to June 16, 1930, to settle and transmit record filed by general counsel.

Apr. 11—Order enlarging time to June 16, 1930, for preparation of evidence and delivery of record entered.

June 16—Motion for extension to Aug. 15, 1930, to settle and transmit record filed by general counsel.

June 16—Order enlarging time to Aug. 15, 1930, for preparation of evidence and delivery of record entered.

Aug. 4—Præcipe filed; proof of service thereon.

Now, Aug. 13, 1930, the foregoing docket entries certified from the record as a true copy.

[SEAL.]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

3 Before U. S. Board of Tax Appeals

Petition

Filed Nov. 20, 1926

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:CR:Ad-60-D-WLC.) dated September 21, 1926, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation with principal office at 509 South Wabash Avenue, Chicago, Illinois.

2. The notice of deficiency (a copy of which is attached and mailed "Exhibit A") was mailed to the petitioner on September 21, 1926.

3. The taxes in controversy are income taxes for the calendar year 1923 and for $1,919.59.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The commissioner has disallowed as a credit against the petitioner's income tax for the calendar year 1923 the amount of income taxes paid to foreign countries. In revenue agent's report dated March 23, 1926, upon which the commissioner's determination is based, it is stated that—

"Any income, war-profits or excess-profits taxes paid to the Commonwealth of Australia, under the laws of the Commonwealth of

Australia, as indicated under article 612 of regulations 62, would be allowed as a credit, and if the taxpayer will submit proof of such taxes being paid and all other necessary data as to how the amount claimed as a deduction is arrived at, etc., same should be given consideration."

Before the necessary proofs could be secured from Australia a sixty-day letter was sent to the petitioner by the commissioner.

(b) The commissioner has failed to take into consideration income taxes paid by the petitioner's foreign subsidiary, of which petitioner owns a majority of the stock, to the Dominion of New Zealand as a credit against petitioner's tax liability for 1923.

(c) The commissioner erred in relying upon S. M. 1614, Cumulative Bulletin III–1, page 227, which, petitioner contends, is an
4 erroneous interpretation of the meaning of the term "foreign countries" as used in section 238 (a) of the revenue act of 1921.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) That the petitioner received dividends in the amount of £4,047.80 during the calendar year 1923 from the International Art Company, Ltd., Sydney, Australia, upon which income taxes had been paid to the following foreign countries:

Commonwealth of Australia.
New South Wales.
Dominion of New Zealand.

6. Wherefore the petitioner prays that this board may hear the proceeding and that proper credit for income and profits taxes paid to foreign countries be allowed against the petitioner's tax liability for the calendar year 1923.

EDGAR H. WALKER,
Counsel for the Petitioner,
509 So. Wabash Ave., Chicago, Ill. (*P. O. address*).

[*Duly sworn to by Edgar H. Walker; jurat omitted in printing.*]

5 *Exhibit A–1 to petition*

TREASURY DEPARTMENT,
Washington, Sept. 21, 1926.

IT:CR:Ad–60D–WLC.
CHICAGO PORTRAIT COMPANY,
509 South Wabash Avenue, Chicago, Illinois.

SIRS: An examination of your income-tax returns in connection with a revenue agent's report dated February 17, 1926, and of your books of account and records and those of your affiliated companies discloses a deficiency in tax for the years 1922 and 1923 of $1,919.59, as shown in the attached statement.

In accordance with the provisions of section 274 of the revenue act of 1926 you are allowed 60 days from the date of mailing of this letter within which to file a petition for the redetermination of this deficiency. Any such petition must be addressed to the United